

NOV 02 2007

*Gonzalez v. Astrue*, No. 06-55183

FISHER, Circuit Judge, dissenting:

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

I would affirm the district court's grant of summary judgment in favor of the Commissioner.

In addition to finding Dr. Lizarraras' functional assessment well-reasoned and consistent with the record, the ALJ provided other specific and legitimate reasons for discounting Dr. Jacobo's opinion that the majority does not address. These reasons are supported by substantial evidence in the record. Further, the ALJ also considered the opinion of Dr. Thomas Schweller, an examining medical consultant who opined that Gonzalez was capable of light level functioning with occasional limits in bending, stooping and squatting. Dr. Jacobo noted that he disagreed with the report from Dr. Schweller, thereby acknowledging that his opinion was contradicted. *See Edlund v. Massanari*, 253 F.3d 1152, 1157 ("if contradicted by another doctor, the testimony of a treating physician can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record") (internal quotation marks omitted).

The majority also overlooks some of the reasons the ALJ provided for finding Gonzalez not a credible witness. For example, the ALJ specified that Gonzalez answered questions in a less than forthcoming and evasive manner. The record supports this finding. The ALJ also noted that Gonzalez gave conflicting

testimony in some instances, appeared to exaggerate her symptoms, has a poor work history and has shown little propensity to work during her lifetime, citing *Thomas v. Barnhart*, 278 F.3d 947 (9th Cir. 2002). Additionally, the ALJ specified that Gonzalez's work as an agricultural laborer, albeit brief, was inconsistent with the alleged severity of impairment in her left leg. Even if we consider the evidence susceptible to another interpretation, we must uphold the ALJ's decision where, as here, his interpretation is rational. *See Andrews v. Shalala*, 53 F.3d 1035, 1039-40 (9th Cir. 1995).

Finally, the ALJ did not err in applying the medical vocational guidelines because there is substantial evidence supporting his determination that Gonzalez could perform a full range of light work.

I respectfully dissent.